A

HARDIAL SINGH SEKHON

v.

PP

B

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
HASHIM YUSOF JCA
JAMES FOONG JCA
[CRIMINAL APPEAL NO: B-05-39-2000]

C

20 FEBRUARY 2009

CRIMINAL PROCEDURE: *Contempt of court - Sentence, appeal against - Nature of contempt committed - Whether term of 12 months' imprisonment excessive - Circumstances to be considered - Whether a lesser*

D *term of imprisonment more appropriate*

CRIMINAL PROCEDURE: *Sentence - Appeal against sentence - Contempt of court - Nature of contempt committed - Whether term of 12 months' imprisonment excessive - Circumstances to be considered -*

E *Whether a lesser term of imprisonment more appropriate*

The appellant, a declared and gazetted vexatious litigant, brought an election petition against the former Prime Minister and others claiming relief. Since he did not obtain leave to bring the petition, it was obviously unsustainable and was dismissed out of hand.

F The trial judge, however, went on to frame a charge of contempt against the appellant for his breach of the order declaring him a vexatious litigant in that he brought the proceedings in question without obtaining the court's leave. The judge, after conducting a hearing, found the appellant guilty and sentenced him to 12

G months' imprisonment. This was the appellant's appeal against the sentence imposed.

Held (setting aside the order of the judge, and sentencing the appellant to eight months' imprisonment)

H **Per Gopal Sri Ram JCA delivering the judgment of the court:**

(1) The term of imprisonment was excessive having regard to the nature of the contempt committed. While it is true that the

I court has the power to impose a term of imprisonment upon a contemnor, the power is one that should be exercised with

circumspection. In this case, having regard to the defiant conduct exhibited by the appellant before the judge, imprisonment was well deserved. However, taking into account the obviously frivolous nature of the petition filed, the appellant's stand that he did what he did in the public interest, the appellant's age and the other circumstances of the case, including public interest, a term of eight months' imprisonment was a more appropriate punishment. (para 3)

Bahasa Malaysia *Translation Of Headnotes*

Perayu, seorang litigan menyusahkan yang diisytiharkan dan diwartakan, mengemukakan sesuatu petisyen pilihanraya terhadap bekas Perdana Menteri dan lain-lain memohon relif. Oleh kerana beliau tidak memperolehi kebenaran untuk mengemukakan petisyen itu, ia sememangnya tidak boleh dibenarkan dan telah ditolak bulat-bulat. Hakim perbicaraan, walau bagaimanapun, seterusnya membuat suatu tuduhan penghinaan terhadap perayu kerana melanggar perintah yang mengisytiharkannya seorang litigan menyusahkan dalam mana beliau membawa prosiding yang berkenaan tanpa memperolehi kebenaran mahkamah. Hakim itu, selepas menjalankan satu pembicaraan, mendapati perayu bersalah dan menghukumnya kepada 12 bulan dalam penjara. Ini merupakan rayuan perayu terhadap hukuman yang dikenakan.

Diputuskan (mengenepikan perintah mahkamah, dan menghukum perayu kepada lapan bulan dalam penjara)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Tempoh pemenjaraan itu keterlaluan memandangkan sifat penghinaan yang dilakukan. Walau pun ia benar bahawa mahkamah mempunyai kuasa untuk mengenakan satu tempoh pemenjaraan atas seorang yang melakukan penghinaan, kuasa itu seharusnya dilaksanakan dengan hati-hati. Dalam kes ini, memandangkan kelakuan ingkar yang ditunjukkan oleh perayu di hadapan hakim, pemenjaraan patut dikenakan. Walau bagaimanapun, mengambil dalam pertimbangan sifat yang sememangnya remeh petisyen yang difail itu, pendirian perayu bahawa beliau membuat sedemikian disebabkan kepentingan awam, umur perayu dan keadaan-keadaan lain kes ini, termasuk kepentingan awam, satu tempoh pemenjaraan selama lapan bulan merupakan hukuman yang lebih berpatutan.

A *For the appellant - Hardial Singh Sekhon (representing himself)*
For the respondent - Pretam Singh (Aslam Zainuddin with him); A-G's Chambers

Reported by Suresh Nathan

B

JUDGMENT

Gopal Sri Ram JCA:

C **[1]** The appellant is a declared and gazetted vexatious litigant. He brought an election petition against the former Prime Minister and others claiming relief. The appellant did not obtain leave to bring the petition. Hence the petition was obviously unsustainable and was dismissed out of hand. The trial judge however went on
D to frame a charge of contempt against the appellant for his breach of the order declaring him a vexatious litigant in that he brought the proceedings in question without obtaining leave of court.

[2] There was material before the learned judge that the
E appellant had on previous occasions committed a breach of the order declaring him a vexatious litigant by bringing proceedings without leave of court. After conducting a hearing that scrupulously complied with all the elements of procedural fairness the learned judge found the appellant guilty and sentenced him to
F 12 months imprisonment. The appellant appealed against the sentence imposed.

[3] After having heard the appellant and the learned deputy in reply, we came to the conclusion that the term of imprisonment
G imposed was excessive having regard to the nature of the contempt committed. While it is true that the court has power to impose a term of imprisonment upon a contemnor, the power is one that should be exercised with circumspection. In this case we agree that having regard to the defiant conduct exhibited by the
H appellant before the learned judge, imprisonment was well deserved. However, taking into account the obviously frivolous nature of the petition filed, the appellant's stand that he did what he did in the public interest, the appellant's age and the other circumstances of the case, including public interest, we considered
I a term of eight months imprisonment to be a more appropriate punishment. We therefore set aside the order of the judge and sentenced the appellant to eight months imprisonment.